

FILED

DEC 07 2005

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

GABRIEL CLARK-AIGNER,)

Defendant.)

A02-0007-CR (JWS)

MOTION TO LATE FILE

MOTION FOR EVIDENTIARY

HEARING ON DISPUTED ISSUES

Excludable delay under 18 U.S.C. § 3161(h), delay attributable to filing by defendant, may occur as a result of the filing or granting of the present filing.

Gabriel Clark-Aigner moves the court to permit him to late file his motion to hold an evidentiary hearing on the disputed issues presented in his petition under 28 U.S.C. 2255.

The primary motion had to have been filed by December 1, 2005. It is instead being filed on December 6, 2005. The delay is due to the fact that counsel for Mr. Clark-Aigner was hospitalized in October, 2005 and since being released to work has been addressing a substantial backlog. Counsel has however received written communications from Mr. Clark-Aigner and remains in contact with him. A brief of Affidavit of Counsel is attached.

RESPECTFULLY SUBMITTED this 5th day of Dec., 2005 at Anchorage, Alaska.

Sterling & DeArmond, P.C.
Counsel for Defendant
Gabriel Clark-Aigner

By: 

United States v. Clark-Aigner
A02-0007-CR (JWS)
Motion To Late File
Motion For Evidentiary Hearing
Page 1 of 2

IT IS SO ORDERED

This _____ day of _____ 20____

UNITED STATES MAGISTRATE JUDGE

357

Sterling & DeArmond

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(907) 376-8076 www.alaskalawyers.net FAX (907) 376-8078

Scott A. Sterling

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by
(U.S. Mail, first class, postage-prepaid)(delivery)(~~fax~~), on the 5th day of
Dec., 2005 upon:

AUSA Kevin Feldis
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Room 253
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Fax: (907) 271-3224

Counsel for Plaintiff
United States of America

By: 

Sterling & DeArmond

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) A02-0007-CR (JWS)
)
vs.)
)
GABRIEL CLARK-AIGNER,) **AFFIDAVIT OF COUNSEL:**
) **MOTION TO LATE FILE**
Defendant.) **MOTION FOR EVIDENTIARY**
) **HEARING ON DISPUTED ISSUES**

Scott A. Sterling being first duly sworn declares:

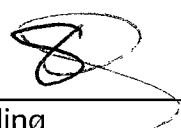
1. I am counsel for defendant Gabriel Clark-Aigner concerning his petition under 28 U.S.C. § 2255 to modify or vacate his sentence.
2. The court established a deadline of December 1, 2005 for Mr. Clark-Aigner to file an amended petition. After investigating the matter I have filed a motion for an evidentiary hearing based upon the differing recollections of Mr. Clark-Aigner and his former attorney. That motion is being filed as of December 6, 2005. The delay in filing is primarily due to my being behind in my workload. I am behind in my workload primarily because I was hospitalized in October, 2005 and since being released to work have had to address a substantial backlog of work. I do not believe that the Government will suffer any prejudice by means of the court permitting late filing of the primary motion.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

United States v. Clark-Aigner
A02-0007-CR (JWS)
Affidavit of Counsel:
Motion To Late File
Motion For Evidentiary Hearing
Page 1 of 3

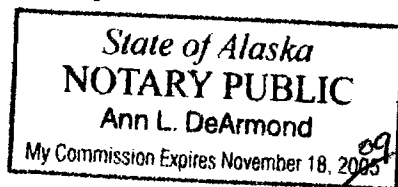
Sterling & Dearmond

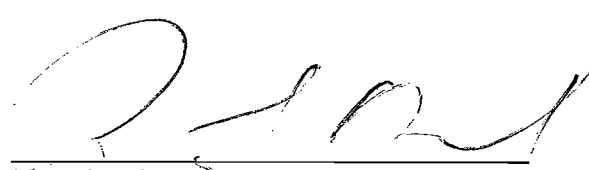
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(907) 376-8076 www.alaskadefenders.net FAX (907) 376-8078



Scott A. Sterling

SUBSCRIBED AND SWORN to before me this 5th day of December,
2005 at Wasilla, Alaska.





NOTARY PUBLIC in and for Alaska
My Commission Expires: 11-18-09



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Counsel for Plaintiff
United States of America

By: 

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United States v. Clark-Aigner
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Affidavit of Counsel:
Motion To Late File
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Page 3 of 3

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DEC 07 2005

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

GABRIEL CLARK-AIGNER,)

Defendant.)

A02-0007-CR (JWS)

**MOTION FOR EVIDENTIARY
HEARING ON DISPUTED ISSUES**

Excludable delay under 18 U.S.C. § 3161(h), delay attributable to filing by defendant, may occur as a result of the filing or granting of the present filing.

Gabriel Clark-Aigner moves the court to hold an evidentiary hearing on the disputed issues presented in his petition under 28 U.S.C. 2255. In essence Mr. Aigner contends that his former counsel, Matthew Claman, proved ineffective by reason of failing to adequately communicate with and/or explain to Mr. Aigner the implications, in terms of sentencing, of his proceeding to trial versus negotiating a Rule 11 plea agreement. In addition, Mr. Aigner claims that Mr. Claman did not adequately communicate with him concerning the actual or probable risk that he would receive a sentence in excess of 10 years imprisonment.

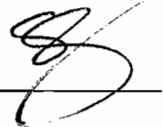
Undersigned counsel contacted Mr. Claman and has been in communication with Mr. Aigner. Mr. Claman's recollection is that he and Mr. Aigner enjoyed adequate attorney-client communications and that Mr. Aigner sufficiently understood his Rule 11 agreement and its implications.

Mr. Aigner does not agree. There does not appear to be any satisfactory way of resolving their differences short of holding an evidentiary hearing, taking testimony and allowing the trier of fact (in this instance, the court itself) to weigh the relevant evidence and make a decision.

In sum, Mr. Aigner's petition sufficiently sets forth his contentions that he did not receive effective assistance of counsel. It appears that an evidentiary hearing is necessary to resolve the disputed issues. An Affidavit of Counsel and proposed Order are attached.

RESPECTFULLY SUBMITTED this 5th day of Dec., 2005 at Anchorage, Alaska.

Sterling & DeArmond, P.C.
Counsel for Defendant
Gabriel Clark-Aigner

By: 
Scott A. Sterling

Sterling & DeArmond

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Counsel for Plaintiff
United States of America

By:  _____

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	A02-0007-CR (JWS)
)	
vs.)	
)	
GABRIEL CLARK-AIGNER,)	
)	AFFIDAVIT OF COUNSEL RE:
Defendant.)	MOTION FOR EVIDENTIARY
)	HEARING ON DISPUTED ISSUES

Scott A. Sterling being first duly sworn declares:

1. I am counsel for defendant Gabriel Clark-Aigner in connection with his petition, filed pursuant to 28 U.S.C. § 2255, to correct, modify or vacate his sentence.
2. Based upon the fact that Mr. Clark-Aigner alleges in that petition that he received ineffective assistance of counsel, I contacted attorney Matt Claman of Anchorage, who represented Mr. Clark-Aigner in the proceedings before this court up to and including imposition of sentence. Mr. Claman advised that he remembered Mr. Clark-Aigner and his case, and that there existed adequate attorney-client communications throughout the representation, including communication concerning the Rule 11 plea agreement and its implications in terms of any sentence that might be or was imposed. Mr. Claman also advised that he still has Mr. Clark-Aigner's files in his possession.

3. Although Mr. Clark-Aigner was placed in administrative segregation and medical segregation during much of the fall of 2005 I received written communications from him affirming his belief that Mr. Claman proved ineffective by reason of failing to adequately communicate with and/or explain to Mr. Aigner the implications, in terms of sentencing, of his proceeding to trial versus negotiating a Rule 11 plea agreement. In addition, As noted, Mr. Aigner claims that Mr. Claman did not adequately communicate with him concerning the actual or probable risk that he would receive a sentence in excess of 10 years imprisonment.

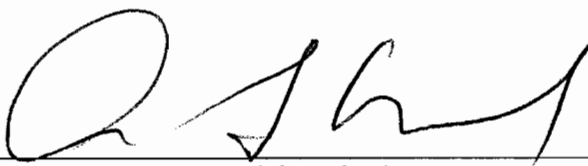
4. For those reasons and upon those grounds I believe that it is necessary and appropriate for the court to hold an evidentiary hearing to take testimony from Mr. Clark-Aigner and Mr. Claman on those issues directly pertaining to the claim of ineffective assistance of counsel.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

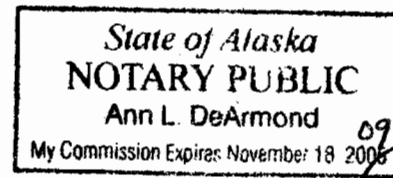


Scott A. Sterling

SUBSCRIBED AND SWORN to before me this 5th day of December, 2005 at Wasilla, Alaska.



NOTARY PUBLIC in and for Alaska
My Commission Expires: 11-18-09



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Counsel for Plaintiff
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By: 

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